

9) Rip has the B&W documents in his office in two boxes. Republican Members and staff can view the documents, but only in his office. He said he was unconcerned about the injunction, because they are Congress and a state court judge has no power over them.

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Note for Nicoli, David

From: Nicoli, David
Date: Mon, May 16, 1994 8:21 PM
Subject: Waxman Staff Briefing
To: Linehan, Kathleen

Here is what I have been able to confirm from personal conversations I had late in the day with Shane Schreifer (Gary Frank's office), Robert Talley (McMillan's office), Melody Hughson (Minority staff), and Maples, who spoke w/Bilirakis' office. Kathy from Rowland's office did not attend, and Brenda from Townes' office was only there for part of it.

Here are the main points, which were confirmed by at least 2 people:

- 1) Rip Forbes said that they planned on holding "many more" hearings this year, and that one of them will likely be focused on PM/Denoble. (There were conflicting versions here--Brenda did not hear it, although she was not there for the whole thing. McMillan's staffer and Frank's staffer heard this about PM while Melody could not recall. All could recall Rip singling PM out as being very cooperative so far.)
- 2) Today's hearing will have only Califano as a witness. He will focus on the costs to the Medicare system that smoking allegedly causes, and he will also explain how federal tobacco policies would have been different had the industry, per the B&W documents, not allegedly hid the truth about smoking's health problems and its addictiveness.
- 3) Friday's tentative hearing will involve Sandefuer, who will be asked about his previous statements about addiction in light of the B&W documents and about why B&W allegedly decided in 1963 not to share their research findings w/the S.G. Waxman also will heavily focus on the issue of "ethics"; ie, the industry allegedly using attorneys and legal privileges to hide research that does not turn out right. Note that they are very interested in BAT and that they have invited the CEO to testify on Friday too, but that they have not heard back from him.
- 4) They will not be requesting Yeaman to testify because of his advanced age, although they said that the industry could invite him to testify if they wished.
- * 5) When asked by a Republican staffer what the point of the hearings were and why they were holding them, Rip replied that the reasons were twofold: first, for product liability suits, because once all this info comes out, the industry would supposedly lose everything that comes down the pike; and second, because this would provide the evidence Kessler needs to prove "intent" and assert FDA jurisdiction.
- 6) Rip said they will be developing evidence that the industry allegedly shared the B&W research, and they already had evidence that RJR was aware of it.
- 7) Rip did not say anything about subpoenas, nor about industry legal privileges, except to the extent that Waxman will attack the "ethics" of their use to allegedly suppress research.
- 8) They will not use the B&W documents tomorrow, but will instead rely on the Times and Post stories for questioning.

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